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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-912]

Certain New Pneumatic Off-The-Road Tires from the People's Republic of China; 2012-2013: Notice of Court Decision Not in Harmony with Final Results of Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 3, 2019, the United States Court of International Trade (the Court) issued a final judgment in *China Manufacturers Alliance, LLC. and Double Coin Holdings Ltd., et al. v. United States*, Consol. Court No. 15-00124; Slip Op. 19-115 (CIT September 3, 2019) (*China Mfr. Alliance III*), sustaining the Department of Commerce's (Commerce) remand results for the fifth administrative review of the antidumping duty (AD) order on certain new pneumatic off-the-road tires (OTR tires) from the People's Republic of China (China) covering the period of review (POR) September 1, 2012 through August 31, 2013. Commerce is notifying the public that the Court has made a final judgment that is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to certain exporters identified herein.

DATES: Applicable September 13, 2019.

FOR FURTHER INFORMATION CONTACT: Keith Haynes, AD/CVD Operations Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-5139.

SUPPLEMENTARY INFORMATION:

Background

On April 15, 2015, Commerce issued its *Final Results*¹ in the fifth administrative review of the AD order on OTR tires from China. The plaintiffs in this litigation, mandatory respondent Double Coin Holdings Ltd and its affiliated U.S. importer China Manufacturers Alliance, LLC, and mandatory respondent Guizhou Tyre Co., Ltd. and Guizhou Tyre Import and Export Co., Ltd. (collectively, GTC), timely filed complaints with the Court challenging certain aspects of Commerce's *Final Results*.² Domestic interested parties Titan Tire Corporation and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC intervened as defendant-intervenors, but withdrew from these cases on September 29, 2017.³

On February 6, 2017, the Court remanded Commerce's *Final Results*.⁴ In its First Remand Redetermination, Commerce: (1) continued to reduce GTC's U.S. sales prices to account for irrecoverable value-added tax (VAT); (2) determined that "Shanghai Port Surcharges," but not other brokerage and handling or ocean freight charges, were double counted and removed the charges from the international freight surrogate value calculation; (3) made an inflation adjustment to domestic warehousing costs to match the surrogate value to the POR; and (4) assigned Double Coin a *de minimis* 0.14 percent margin instead of assigning it a 105.31 percent margin as part of the China-wide entity, under respectful protest.⁵ After issuing its First

¹ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 80 FR 20197 (April 15, 2015) (*Final Results*) and accompanying Issues and Decision Memorandum (IDM).

² See *China Mfr. Alliance III*, at 2.

³ *Id.*

⁴ See *China Manufacturers Alliance, LLC et al. v. United States*, Consol. Court No. 15-00124, Slip Op 17-12 (CIT February 6, 2017) (*China Mfr. Alliance I*).

⁵ See *Final Results of Redetermination Pursuant to Remand*, Court No. 15-00124, Slip Op. 17-12 (CIT 2017) (First Remand Redetermination); see also *Viraj Group, Ltd. v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003).

Remand Redetermination, Commerce moved for a partial voluntary remand on the issue of Double Coin's margin in light of the Court of Appeals for the Federal Circuit's (CAFC) decision in *Diamond Sawblades 2017*.⁶

On January 16, 2019, the Court sustained, in part, and remanded, in part, Commerce's First Remand Redetermination and denied Commerce's motion for partial voluntary remand.⁷ The Court sustained Commerce's determinations to make an inflation adjustment to domestic warehousing costs and that Shanghai Port Charges were double counted for GTC.⁸ In denying Commerce's motion for partial voluntary remand, the Court found that the only rate supported by the record evidence that Commerce could apply to Double Coin is the 0.14 percent margin applied in the First Remand Redetermination.⁹ The Court remanded Commerce's determinations: (1) that the brokerage and handling and ocean freight charges other than the Shanghai Port Charges were not double counted for GTC;¹⁰ and (2) to continue reducing GTC's U.S. sales prices to account for irrecoverable VAT.¹¹

In its Second Remand Redetermination, Commerce recalculated GTC's U.S. sale prices without making deductions for irrecoverable VAT, under respectful protest, and adjusted GTC's brokerage and handling and ocean freight costs for certain double-counted expenses.¹²

In light of these determinations, Commerce has made changes to GTC's margin calculation and the margin assigned to Double Coin.¹³ After accounting for all such changes and

⁶ See *Diamond Sawblades Mfrs. Coal. v. United States*, 866 F.3d 1304 (CAFC 2017) (*Diamond Sawblades 2017*).

⁷ See *China Manufacturers Alliance, LLC et al. v. United States*, Consol. Court No. 15-00124, Slip Op 19-7 (CIT January 16, 2019) at 42-43 (*China Mfr. Alliance II*).

⁸ *Id.* at 8-9.

⁹ *Id.* at 41-42.

¹⁰ *Id.* at 25.

¹¹ *Id.* at 18-19.

¹² See *Final Results of Redetermination Pursuant to Court Remand*, Court No. 15-00124, Slip Op. 19-7 (CIT 2019) (Second Remand Redetermination).

¹³ See Memorandum, "Draft Results of Redetermination Pursuant to Second Court Remand in the 2012-2013 Antidumping Duty Administrative of Certain New Pneumatic Off-the-Road Tires from the People's Republic of

issues addressed in the remand redeterminations, the resulting weighted-average dumping margin for GTC is 4.59 percent, and the margin assigned to Double Coin is 0.14 percent. On September 3, 2019, the Court sustained the Second Remand Redetermination.¹⁴

Consistent with the decision of the CAFC in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's *Final Results*. Thus, Commerce is amending the *Final Results* with respect to the weighted-average dumping margins for the mandatory respondents, as listed above.

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s September 3, 2019 judgment sustaining the Second Remand Redetermination constitutes a final decision of the Court that is not in harmony with Commerce’s *Final Results*. As such, Commerce has published this notice in fulfillment of the publication requirement of *Timken*.

China: Margin Calculation and Surrogate Value Memorandum for Guizhou Tyre Co., Ltd. and Guizhou Tyre Import and Export Co., Ltd.,” dated March 21, 2019; *see also* First Remand Redetermination at 21; and Memorandum, “Draft Results of Redetermination Pursuant to Second Court Remand in the 2012-2013 Antidumping Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Margin Calculation and Surrogate Value Memorandum for Guizhou Tyre Co., Ltd. and Guizhou Tyre Import and Export Co., Ltd.,” dated March 21, 2019.

¹⁴ *See China Mfr. Alliance III*.

Amended Final Results

Because there is now a final court decision, Commerce is amending the *Final Results* with respect to the mandatory respondents. The revised weighted-average dumping margins for these exporters during the period September 1, 2012 through August 31, 2013 are as follows:

Exporter	Weighted-Average Dumping Margin (percent)
Double Coin Holdings Ltd.	0.14
Guizhou Tyre Co., Ltd./Guizhou Tyre Export and Import Co., Ltd.	4.59

Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending the end of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, and upheld by the CAFC, Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise exported by the companies identified above using the assessment rates calculated by Commerce in the remand redeterminations, as listed in the above table.

Cash Deposit Requirements

Because the AD order on OTR tires from China was revoked,¹⁵ Commerce will not issue cash deposit instructions as a result of this Court decision.

¹⁵ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Sunset Reviews and Revocation of Antidumping Duty and Countervailing Duty Orders*, 84 FR 20616 (May 10, 2019).

Notification to Interested Parties

Commerce has issued and published this notice in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: October 9, 2019.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

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